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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREN R.,

Defendant and Appellant.

A140378

(San Francisco County Super. Ct. No.
JW13-6345;
San Mateo County Super. Ct. No.
83429)

Appellant Karen R., a minor, appeals from a dispositional order issued after the juvenile court sustained an allegation that appellant assaulted Jorge Antonio O’Campo Flores and found true an enhancement that she personally inflicted great bodily injury upon Flores. On appeal, appellant argues the juvenile court’s finding on the enhancement was not supported by substantial evidence. We affirm.

BACKGROUND

In September 2013, the People filed a Welfare and Institutions Code section 602, subdivision (a), juvenile wardship petition alleging appellant assaulted Flores by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(4))¹ and further

¹ All undesignated section references are to the Penal Code.

alleging she had personally inflicted great bodily injury upon Flores (§ 12022.7, subd. (a)).² Appellant denied the allegations.

At a contested hearing, the People presented evidence that on the night of the assault, Flores and some friends encountered appellant and a man on a sidewalk. A verbal altercation took place between the man and Flores. There was evidence appellant verbally encouraged a physical fight. The man punched Flores in the face and then another man stabbed him. After yet another man hit Flores on the back of his head, he lost consciousness and fell to the ground. Flores drifted in and out of consciousness; he was aware that several people were kicking him in the face.

Damaris Cruz, Flores' friend, saw him fall after being hit from behind. She tried to wake him up. Several people began kicking Flores in the head; Cruz tried to protect him from the blows. Cruz saw appellant kicking Flores. Eventually Flores regained consciousness and he and Cruz were able to leave the area.

After the assault, Flores spent the night in a hospital. He was treated for the stab wound and also for a hole in his eardrum. At the time of the hearing, Flores was still experiencing dizziness as a result of the eardrum injury, as well as double vision.

Appellant testified in her own defense. She admitted she was present at the scene of the assault but denied participating in it.

DISCUSSION

Appellant's sole contention on appeal is the great bodily injury enhancement finding is not supported by substantial evidence. She argues there was no substantial evidence that (1) she personally kicked Flores after he fell to the ground, and (2) Flores sustained great bodily injury as a result of being kicked. We disagree.

Section 12022.7, subdivision (a), provides: "Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of

² The petition alleged additional charges against appellant, which were either dismissed or found not true by the court. Because they are not relevant to this appeal, we omit further discussion of those charges or any underlying facts.

imprisonment in the state prison for three years.” The enhancement can be proven in “group beating” situations where the defendant “joins others in actually beating and harming the victim, and where the precise manner in which [the defendant] contributes to the victim’s injuries cannot be measured or ascertained.” (*People v. Modiri* (2006) 39 Cal.4th 481, 494–495.)

“[W]e must review the whole record in the light most favorable to the judgment and affirm the trial court’s findings . . . if they are supported by ‘substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.]’ [Citations.] The trier of fact, not the appellate court, must be convinced of the minor’s guilt, and if the circumstances and reasonable inferences justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment.” (*In re James B.* (2003) 109 Cal.App.4th 862, 872 (*James B.*))

Appellant first argues there was no evidence she personally kicked Flores. Cruz testified that “a bunch of people started coming around and kicking [Flores]. . . . [¶] . . . I looked up and it was [appellant]. She was there kicking too.” Cruz further testified as follows (with objections omitted):

“Q. So tell the court the orientation of you and the minor when you . . . saw the kicking?

“A. It was just like—when I looked, when I leaned over him and I said, stop, stop, and I was, you know, trying to block the shoes, I looked up and that’s when I saw her again.

“Q. How far away was she at that point from you?

“A. Uhm, I can’t tell the distance but she was—

“Q. Was she within arm’s distance?

“ . . .

“A. I want to say—maybe since I was on the ground, I want to say five feet away from me.

“Q. Okay.

“A. She was standing. I was on the ground.

“Q. How many times did you see her kick [Flores]?”

“A. That, I couldn’t say.

“Q. Where was she kicking [Flores] on his body?”

“ . . .

“A. Uhm, it was over his head, his head area, above his chest.”

Appellant argues this testimony does not constitute substantial evidence because “Cruz did not testify that she saw any of [appellant’s] kicks ever connect with Flores.” Although Cruz did not specifically so testify, her testimony easily gives rise to an inference that appellant was kicking Flores. Even if her testimony also gave rise to a conflicting inference that appellant’s kicks did not make contact with Flores, as appellant argues, it would not impact our analysis as we must accept all reasonable inferences supporting the judgment. (*James B.*, *supra*, 109 Cal.App.4th at p. 872.)

Appellant next argues no substantial evidence supports the juvenile court’s finding that Flores suffered great bodily injury as a result of being kicked while he lay on the ground. Flores testified the assault punctured his eardrum, causing lasting dizziness, and he suffered from double vision.³ Appellant argues the eardrum injury was incurred before Flores fell to the ground, pointing to witness testimony that Flores was punched in the ear by someone other than appellant before he fell to the ground. However, other witnesses testified Flores was punched in the face and the back of the head, not the ear, and the trial court was entitled to credit that testimony. (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728 [“ ‘ “To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.” ’ ”].) In any event, Flores also suffered from double vision after the assault; the trial court could reasonably have concluded this injury was the result of being repeatedly kicked in the head. Either of these injuries constitutes substantial evidence for

³ Appellant contends Flores did not specifically testify that these injuries were caused by the assault. His testimony that he suffered from them after the assault was sufficient for the trial court to infer that the assault was their cause.

the trial court’s finding that Flores suffered great bodily injury. (*People v. Cross* (2008) 45 Cal.4th 58, 64 [whether physical harm constitutes great bodily injury is question of fact]; *People v. Washington* (2012) 210 Cal.App.4th 1042, 1047 [great bodily injury is “ ‘a significant or substantial physical injury’ beyond that which is inherent in the underlying offense”; “some physical pain or damage, such as lacerations, bruises, or abrasions is sufficient”].)

DISPOSITION

The judgment is affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.